

March 10, 2005

**EX PARTE - VIA ECFS**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

**Re: Ex Parte Letter  
Level 3 Petition for Forbearance, CC Docket No. 03-266  
IP-Enabled Services, WC Docket No. 04-36**

Dear Ms. Dortch:

Lightyear Network Solutions, LLC ("Lightyear" or the "Company") submits this letter to support the Petition for Forbearance (the "Petition") filed by Level 3 Communications LLC's ("Level 3") in the docket referenced above.<sup>1</sup> Lightyear was founded in 1993 as a national sales and marketing organization providing telecommunication services and solutions to both commercial and residential customers. Lightyear serves more than 200,000 customers nationwide, as a competitively priced, "one-stop shop" for numerous telecom products for both residential and business customers including: switched and dedicated access 1+ long distance, BizLocal<sup>SM</sup> phone service, Voice over Internet Protocol ("VoIP"), DSL, integrated access services, frame relay, nationwide Internet access (dial-up and dedicated access), calling cards, web page hosting and development services, call analysis software for customized billing reports, multimedia conferencing and other services.<sup>2</sup> Lightyear supports the Petition because if granted, it will promote efficient competition in the IP-based services market, which will drive competition in the United States telecommunications market.

The United States has seen several recent telecommunications "mega-mergers," with more likely in the future. For example, in the past year, wireless carrier Cingular acquired AT&T Wireless,<sup>3</sup> Sprint and Nextel have announced plans to merge,<sup>4</sup> and SBC and AT&T have

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<sup>1</sup> See *Petition for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of 47 U.S.C. § 251(g), Rule 51.701(b)(1), and Rule 69.5(b)*, WC Docket 03-266 (filed Dec. 23, 2003). Simply stated, if granted by the Commission, the Petition will stop local exchange carriers ("LECs") (except for certain rural carriers) from imposing access charges on certain Internet Protocol ("IP") traffic that utilizes the public switched telephone network ("PSTN") for a portion of the traffic's routing.

<sup>2</sup> Additional information on Lightyear is available at: <http://www.lightyear.net>.

<sup>3</sup> See, e.g., *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation For Consent to Transfer Control of Licenses and Authorizations and Applications of Subsidiaries of T-Mobile*

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filed a request for merger approval with the Commission.<sup>5</sup> Moreover, Verizon recently announced plans to merge with MCI, although Qwest is currently considering its merger options with MCI as well.<sup>6</sup> These consolidations in market power, together with recent regulatory developments, pose a distinct threat to competition in the United States telecommunications marketplace. As Lightyear explains herein, granting the Petition is one way to reduce this trend of disappearing competitors.

Given the FCC's recently imposed restrictions on unbundled network element ("UNE") availability,<sup>7</sup> and continuing restrictive capital markets for construction of new facilities, VoIP may be the only effective competition for residential and small business consumers. Because VoIP is an application that can ride on both telecommunications and cable broadband Internet infrastructure, it is in a unique position to create true competition in the United States for communications services. In fact, SBC has touted VoIP as a true competitor:

Literally scores of ... VoIP providers have recently entered the market ..., including Vonage, 8x8, Level 3, Z-Tel (now Trinsic), Covad and many others. Vonage, already has more than 400,000 VoIP lines and is growing rapidly. ISP giant AOL, which has 29 million subscribers, has announced plans to enter the VoIP business. These and other non-facilities-based VoIP providers can enter with relatively modest investment. Analysts uniformly predict that the growth of VoIP "poses a significant competitive challenge" to incumbent telephone companies.<sup>8</sup>

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*USA, Inc. and Subsidiaries of Cingular Wireless Corporation For Consent to Assignment and Long-Term De Facto Lease of Licenses and Applications of Triton PCS License Company, LLC, AT&T Wireless PCS, LLC, and Lafayette Communications Company, LLC For Consent to Assignment of Licenses, Memorandum and Opinion, WT Docket Nos. 04-70, 04-254, 04-323 (rel. Oct. 26, 2004).*

<sup>4</sup> See generally FCC, Office of General Counsel, Sprint-Nextel Transaction: <http://www.fcc.gov/transaction/sprint-nextel.html>. See also, Press Release, Sprint, Sprint and Nextel to Combine in Merger of Equals (Dec. 15, 2004).

<sup>5</sup> See generally FCC, Office of General Counsel, SBC-AT&T Transaction: <http://www.fcc.gov/transaction/sbc-att.html>. See also Press Release, SBC Communications Inc., SBC, AT&T Formally Begin Merger Approval Process (Feb. 22, 2005).

<sup>6</sup> See Press Release, Verizon Communications, Verizon to Acquire MCI for \$5.3 Billion in Equity and Cash (Feb. 14, 2005). But see Yuki Noguchi and Ben White, New Qwest Bid for MCI Offers More Cash Upfront, WASH. POST, Feb. 25, 2005 at E1 (discussing Qwest's attempt to persuade MCI to abandon Verizon's bid).

<sup>7</sup> See generally *Unbundled Access to Network Elements Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, WC Docket No. 04-313, CC Docket No. 01-338 (rel. Feb. 4, 2005).

<sup>8</sup> *Merger of SBC Communications Inc. and AT&T Corp.*, Description of the Transaction, Public Interest Showing, and Related Demonstrations, at 60-61 (filed Feb. 21, 2005) (internal citations omitted), available at: <http://www.fcc.gov/transaction/sbc-att.html>. See also *id.* at 81 (describing increased competition for business customers with cable-based services including VoIP).

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Although SBC claims that VoIP will provide effective competition to the merged SBC/AT&T company, its actions speak louder than words. Through its TIPToP tariff, SBC seeks to strangle the very VoIP competition that it claims justifies approval of its merger.<sup>9</sup> SBC cannot have it both ways. The Commission should not permit SBC and other ILECs to handicap their competitors by imposing above-cost access charges on all IP-PSTN calls.

The Telecommunications Act of 1996 did not contemplate a monopoly or oligopoly in the United States for telecommunications services. Congress enacted it to promote open markets and competition.<sup>10</sup> However, incumbent local exchange carriers (“ILECs”) are still strangling competition in order to retain their dominant market position. Although competitive local exchange carriers (“CLECs”) and wireless carriers have made some progress gaining market share in the communications industry, these service providers have only achieved marginal overall substitution for residential and small business access lines controlled by ILECs.<sup>11</sup> Moreover, given the demise of UNE-P, Lightyear expects CLEC competition to decline in the near future.

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<sup>9</sup> See Letter from Jason Oxman, General Counsel, Association for Local Telecommunications Services, to Jeffrey Carlisle, Chief of the Wireline Competition Bureau, Federal Communications Commission, at 2 (Nov. 19, 2004) (“the TIPToP tariff appears to be an effort by SBC to settle, via a tariff filing, substantial legal questions regarding intercarrier compensation and the applicability of access charges to VoIP traffic.”).

<sup>10</sup> For example, the 1996 Act states:

(a) Within 15 months after the date of enactment of the Telecommunications Act of 1996, the Commission shall complete a proceeding for the purpose of identifying and eliminating, by regulations pursuant to its authority under this Act (other than this section), market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services, or in the provision of parts or services to providers of telecommunications services and information services.

(b) In carrying out subsection (a), the Commission shall seek to promote the policies and purposes of this Act favoring diversity of media voices, *vigorous economic competition, technological advancement*, and promotion of the public interest, convenience, and necessity.

47 U.S.C. § 257 (emphasis added)

<sup>11</sup> For example, the FCC’s most recent local telephone competition status report stated that CLECs reported 32.0 million (17.8%) of the approximately 180.1 million nationwide end-user switched access lines in service as of June 2004. End-users obtained local telephone service with 148.1 million ILEC switched access lines. See FCC, *Local Telephone Competition: Status as of June 30, 2004*, at 1 (Dec. 2004). Further, in the press release accompanying this Report, the Commission noted that “CLECs reported 20.8 million (or 15%) of the 135.4 million lines that served residential and small business end users....” Press Release, Federal Communications Commission, Federal Communications Commission Releases Data on Local Telephone Competition (Dec. 22, 2004).

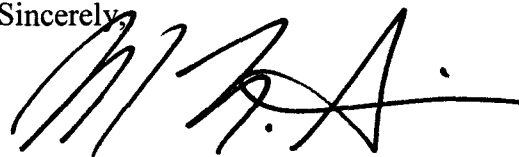
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Granting the Petition will help drive competition in the communications marketplace. It will specify that cost-based reciprocal compensation applies to the exchange of IP-PSTN traffic between carriers, rather than the above-cost access charge regime. This will allow competitive carriers to enter into agreements with other carriers for the termination of such traffic at truly competitive rates. It will also enable service providers to deploy VoIP services that will place competitive price pressure on traditional telephone service provided by ILECs. This competition will drive down prices in the telecommunications market, and will lead to enhanced deployment of new services and technologies, further benefiting American consumers.

For these reasons, Lightyear supports the Petition. The Commission should take the opportunity to apply reciprocal compensation, rather than access charges, to IP traffic terminated over the public switched telephone network. This will provide fair, cost-based compensation for all providers, and give VoIP providers and other competitive carriers the ability to compete with ILECs. This competition will, in turn, drive down consumer prices and open the communications market up to additional competition.

Sincerely,

A handwritten signature in black ink, appearing to be a combination of the names Andrew D. Lipman and Jeffrey R. Strenkowski, written in a cursive, stylized manner.

Andrew D. Lipman  
Jeffrey R. Strenkowski

Counsel for Lightyear

cc: Chairman Michael K. Powell  
Commissioner Kathleen Q. Abernathy  
Commissioner Jonathan S. Adelstein  
Commissioner Michael J. Copps  
Commissioner Kevin J. Martin